

REMARKS

Reconsideration and allowance are respectfully requested in light of the above amendments and the following remarks.

I. Status of Current Claims

Claims 1-10, 18 and 19 are pending, with each of claims 1-10 and 18 claims being rejected.

Applicants note that Section 4 of the Summary sheet of the Office Action correctly indicates that claims 1-10 and 18 are pending, but incorrectly identifies in Section 4a claims 11-17 as being withdrawn from consideration. Specifically, the Office Action of June 23, 2004 states that only "claim 17 is directed to an invention that is independent or distinct from the invention originally claimed," and further, only "claim 17 is withdrawn from consideration as being directed to a non-elected invention."

In response, in the Amendment of September 23, 2004, claim 17 was cancelled without prejudice or disclaimer, and since claim 17 is not pending, it cannot be "withdrawn from consideration."

While claims 11-16 were also cancelled, there was never an indication that claims 11-16 were ever subject to a restriction/election requirement. Thus, although claims 11-16 are not currently pending, none of claims 11-16 were ever "withdrawn from consideration."

II. Claim Amendments

Claims 1, 8, 9 and 18 have been amended to recite "wherein the nickel hydroxide particles are not treated with an aqueous solution and oxidizing agent." Similarly, new claim 19 has been added to more clearly identify this feature. As discussed in the second full paragraph of page 8 of the present specification,

treatment of the rare earth oxide can be performed outside the battery. Accordingly, the nickel hydroxide is not subjected to either the alkaline solution or the oxidizing agent. Thus, no new matter has been entered.

III. Response to Arguments

The Office Action remarks "no recitation is made that the nickel hydroxide particles are not treated with an aqueous alkaline solution and oxidizing agent. Therefore as written any source of nickel hydroxide particles meets the scope of the claim, regardless of how it is formed or treated." In response, the claims have been amended to limit how the nickel hydroxide is formed or treated.

Thus, as none of the cited references teaches or suggests treatment of the rare earth oxide with an aqueous alkaline solution and an oxidizing agent, without also treating the nickel hydroxide, Applicants respectfully submit that each of the pending claims present allowable subject matter.

Thus, Applicants respectfully request reconsideration of the rejections of claims 1-3, 6-10 and 18 under 35 USC § 102 as being anticipated by Ogasawara et al. (U.S. Patent No. 6,576,368), and of claims 4 and 5 under 35 USC § 103(a) as being unpatentable over Ogasawara et al. in view of Furukawa et al. (U.S. Patent No. 6,136,473).

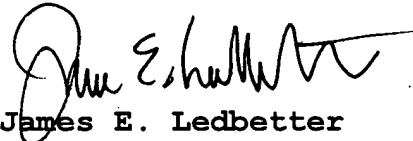
IV. Conclusion

Applicants respectfully request entry of the above amendments and passage of the application to allowance.

In view of the above, it is submitted that this application is in condition for allowance and a notice to that effect is respectfully solicited.

If any issues remain which may best be resolved through a telephone communication, the Examiner is requested to telephone the undersigned at the local Washington, D.C. telephone number listed below.

Respectfully submitted,



James E. Ledbetter
Registration No. 28,732

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JEL/EPR

Attorney Docket No. L7016.01105
STEVENS DAVIS, MILLER & MOSHER, L.L.P.
1615 L Street, N.W., Suite 850
P.O. Box 34387
Washington, D.C. 20043-4387
Telephone: (202) 785-0100
Facsimile: (202) 408-5200